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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA SECURITIES, LLC,
 Debtor.

MOTION TO PERMIT DEBTOR TO REMAIN ON LEASED PREMISES FOR LIMITED POST-EFFECTIVE DATE PERIOD

Affects:
☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

Date: OST REQUESTED
 Time: OST REQUESTED

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1 USA Commercial Mortgage Company, USA Capital Realty Advisors, LLC, USA Capital
 2 Diversified Trust Deed Fund, LLC, USA Capital First Trust Deed Fund, LLC and USA Securities,
 3 LLC (collectively the “Debtors”) in the above captioned jointly administered cases, respectfully
 4 request that the Court issue an order allowing USA Commercial Mortgage Company (“USACM”)
 5 to continue to occupy its current offices located at 4480 South Pecos Road, Las Vegas, Nevada
 6 89121 through March 31, 2007. In support of this motion (the “Motion”), the Debtors represent as
 7 follows:

8 1. The Debtors have operated their businesses in two adjacent buildings located at
 9 4480 and 4484 South Pecos Road, Las Vegas, Nevada 89121.

10 2. On April 1, 2002, Haspinov, LLC (“Haspinov”) and USACM entered into a 120
 11 month Office Lease (the “Lease”) covering “The entire building known as 4480 South Pecos
 12 Road, Las Vegas, Nevada 89121, the same being the building occupying the northwest sector of
 13 Pecos Professional Park, located at the northeast corner of South Pecos Road and Harmon Avenue
 14 in Clark County, Nevada.” (the “Leased Premises”). *See Lease*, Exhibit A, Description of Leased
 15 Property. Pursuant to its terms, the Lease would not expire until 12:00 a.m. on April 1, 2012.

16 3. Pursuant to the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization
 17 (the “Plan”), which was confirmed by the Bankruptcy Court on January 8, 2007, all unexpired
 18 leases existing between the Debtors and any other entity are rejected upon the Effective Date. *See*
 19 *Plan* Art. V(B)(1). Accordingly, the Lease, as well as the lease covering the adjacent office
 20 building will be rejected upon the Effective Date of the Plan.

21 4. The Debtors anticipate that the conditions precedent to the Effective Date will be
 22 satisfied or waived by early March 2007, and thus expect that the Effective Date will occur in
 23 early March 2007.

24 5. The Debtors will vacate and turnover the 4484 South Pecos Road office building
 25 upon the rejection of the lease on the Effective Date; however, it is necessary that USACM be
 26 allowed to continue to occupy the adjacent Leased Premises through March 31, 2007 because
 27 USACM needs to provide loan services as sub-servicer to Compass Partners, LLC (“Compass”)
 28 under the arrangements previously authorized by this Court while Compass proceeds with its

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1 licensing application. There is no reason to delay the Effective Date of the Plan on account of the
 2 sub-servicing, but office facilities are required. If the sub-servicing arrangements are still needed
 3 after March 31, 2007, there will be time during that month to facilitate the transition of sub-
 4 servicing to other space leased by Compass because USACM needs to provide loan services as
 5 sub-servicer to Compass Partners, LLC ("Compass") under the arrangements previously
 6 authorized by the Court while Compass proceeds with its licensing application. There is no reason
 7 to delay the Effective Date on account of the sub-servicing, but office facilities are required. If the
 8 sub-servicing arrangements are still needed after March 31, 2007, there will be time during that
 9 month to facilitate the transition of sub-servicing to other space leased by Compass.

10 6. The Lease requires USACM to make its March 2007 rent payment in the amount of
 11 \$25,994.21 on or before March 1, 2007, prior to the Effective Date of the Plan and the rejection of
 12 the Lease, and USACM will make that payment to Haspinov. Thus, Haspinov will be fully
 13 compensated and will not be harmed by USACM's continued occupancy of the Leased Premises
 14 for a short period in March 2007 after the Effective Date of the Plan.

15 7. Furthermore, although the Lease will be "rejected" upon the Effective Date of the
 16 Plan, it will not be terminated. Rejection "constitutes a breach" of the Lease as of the petition date
 17 under 11 U.S.C. § 365(g). At least three circuits have held that 11 U.S.C. §365(g) "does not mean
 18 that the executory contract or lease has been terminated, but only that a breach has been deemed to
 19 occur." *Eastover Bank for Savings v. Sowashee Venture, et al. (In re Austin Dev. Co.)*, 19 F.3d
 20 1077, 1082 (5th Cir. 1994) (citing *In re Continental Airlines*, 981 F.2d 1450, 1459 (5th Cir. 1993)
 21 ("to assert that a contract effectively does not exist as of the date of the rejection is inconsistent
 22 with deeming the same contract breached"); *In re Modern Textile, Inc.*, 900 F.2d 1184, 1191 (8th
 23 Cir. 1990) ("[R]ejection operates as a breach of an existing and continuing legal obligation of the
 24 debtor, not as a discharge or extinction of the obligation itself."); *Leasing Service Corp. v. First*
 25 *Tennessee Bank, Nat'l Ass'n*, 826 F.2d 434, 436-37 (6th Cir. 1987)). Accordingly, although the
 26 Lease will have been breached by USACM upon the Effective Date of the Plan, the Lease remains
 27 in existence and where USACM will have paid rent through March 31, 2007, USACM is entitled
 28 to remain in possession of the Leased Premises for that limited additional period.

8. Accordingly, USACM should be entitled to remain on the Leased Premises through March 31, 2007. USACM has approached Haspinov, which is owned in part by USA Investment Partners, LLC, and asked Haspinov to agree to allow USACM to remain in the Leased Premises through March 2007, but Haspinov has not yet agreed, and thus this motion is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter an order providing that USACM may continue to occupy the Leased Premises through March 31, 2007.

DATED this 22nd day of February, 2007.

/s/ Jeanette E. McPherson
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